Petition

Office-Supreme Court, U.S.
FILED
NOV 30 1981
ALEXANDER L. STEVAS,
CLERK

81-1015

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

HERBERT G. BLECKER
Petitioner,

v.

UNITED STATES OF AMERICA
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

JACOB A. STEIN
ROBERT F. MUSE

STEIN, MITCHELL & MEZINES
1800 M Street, N.W.
Washington, D.C. 20036
(202) 737-7777

SILAS J. WASSERSTROM
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001

Attorneys for:
Herbert G. Blecker

QUESTIONS PRESENTED

1. Whether the petitioner was denied his Sixth Amendment Constitutional right to be tried in the state and district where his alleged crime was committed when, over his objections, he was tried in the Eastern District of Virginia on a charge of making false claims to the government (18 U.S.C. § 287) though he neither prepared nor filed the claims in that state or district.

2. Whether the false claims statute, 18 U.S.C. § 287, applies to commercial transactions between private non-governmental entities.

3. Whether the false claims statute, 18 U.S.C. § 287, can be used by the federal government to police the terms of contracts between subcontractors and government contractors where no false, fictitious or fraudulent claims are made on the government.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
OPINION BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	7
I. THE DECISION OF THE FOURTH CIRCUIT ALLOWING THE GOVERNMENT TO PROSECUTE THE PETITIONER IN A DISTRICT WHERE HE NEITHER PREPARED NOR SUBMITTED THE CLAIMS ALLEGED TO HAVE BEEN FALSE IS INCONSISTENT WITH THIS COURT'S DECISION IN *TRAVIS* V. *UNITED STATES*, 364 U.S. 631 (1961), AND GIVES THE GOVERNMENT UNCONSTITUTIONALLY BROAD, VIRTUALLY UNBRIDLED, DISCRETION TO PICK AND CHOOSE THE COURT IN WHICH IT WILL PROSECUTE FALSE CLAIMS CHARGES	7
II. THIS COURT SHOULD GRANT THE WRIT TO RESOLVE THE SPLIT AMONG THE CIRCUITS ON THE IMPORTANT, RECURRING AND FUNDAMENTAL QUESTION OF WHETHER COMMERCIAL TRANSACTIONS BETWEEN TWO PRIVATE, INDEPENDENT, NONGOVERNMENTAL ENTITIES CAN FORM THE BASIS FOR A FALSE CLAIMS CHARGE UNDER 18 U.S.C. § 287	13
III. THE FOURTH CIRCUIT'S INTERPRETATION OF 18 U.S.C. § 287 AND 18 U.S.C. § 2(b) PERMITS THE FEDERAL GOVERNMENT TO POLICE CONTRACTS BETWEEN PRIVATE PARTIES WITHOUT REGARD TO WHETHER ANY FALSE, FICTITIOUS OR FRADULENT CLAIMS ARE MADE ON THE GOVERNMENT	15
CONCLUSION	16
APPENDIX	

TABLE OF AUTHORITIES

	Page
CONSTITUTIONAL PROVISIONS AND STATUTES:	
United States Constitution, Article III, Section II	2
United States Constitution, Amendment VI	2,9,12
18 U.S.C. § 3237	2,9
18 U.S.C. § 287	2,7,13, 14,15
18 U.S.C. § 2(b)	2,15
CASES CITED:	
DeRosier v. *United States*, 218 F.2d 420 (5th Cir. 1957)	11
Henslee v. *United States*, 262 F.2d 750 (5th Cir. 1959)	11
Imperial Meat Co. v. *United States*, 316 F.2d 435 (10th Cir. 1963)	8,11
Johnson v. *United States*, 410 F.2d 38 (8th Cir. 1969)	7
Lowe v. *United States*, 141 F.2d 1005 (5th Cir. 1944)	14
Pina v. *United States*, 165 F.2d 890 (9th Cir. 1948)	13
Travis v. *United States*, 364 U.S. 631 (1961)	7,8,12
United States v. *Candella*, 487 F.2d 1223 (2d Cir. 1973)	11,12,14
United States v. *Herberman*, 583 F.2d 222 (5th Cir. 1978)	8,11
United States v. *Johnson*, 323 U.S. 273 (1944)	13
United States v. *Kragman*, 225 F.2d 220 (6th Cir. 1955)	8
United States v. *Maher*, 582 F.2d 842 (4th Cir. 1978)	13
United States v. *Miller*, 246 F.2d 486 (2d Cir. 1957)	11
United States v. *Natelli*, 527 F.2d 311 (2d Cir. 1975)	8,11
United States v. *Reass*, 99 F.2d 752 (4th Cir. 1938)	8
United States v. *Ruehrup*, 333 F.2d 641 (7th Cir. 1964)	8,11
United States v. *Slutsky*, 487 F.2d 832 (2d Cir. 1973)	11
United States v. *Snider*, 502 F.2d 645 (4th Cir. 1974)	13
United States v. *Valenti*, 207 F.2d 242 (3d Cir. 1953)	8,14
United States v. *Wertheimer*, 434 F.2d 1004 (2d Cir. 1970)	13,14

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

HERBERT G. BLECKER
Petitioner,

v.

UNITED STATES OF AMERICA
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The petitioner, Herbert G. Blecker, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered in this proceeding on August 27, 1981.

OPINION BELOW

The opinion of the Court of Appeals, not yet reported, appears in the Appendix hereto. The District Court for the Eastern District of Virginia entered no opinion.

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on August 27, 1981. A timely petition for rehearing or rehearing *en banc* was denied on October 20, 1981,

and this petition for certiorari was filed within sixty days of that date. The Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Article III, Section II:

> The trial of all crimes . . . shall be held in the state where the said crimes shall have been committed . . . .

United States Constitution, Amendment VI:

> In all criminal prosecutions, the accused shall enjoy the right to . . . a trial, by an impartial jury of the state and district wherein the crime shall have been committed . . . .

18 U.S.C. § 3237:

> (a) Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district may be inquired of or prosecuted in any district in which such offense was begun, continued or completed.

18 U.S.C. § 287:

> Whoever makes or presents . . . to any department or agency [of the United States] any claim upon or against the United States, or any department or agency thereof, knowing such a claim to be false, fictitious or fraudulent, shall be [punished].

18 U.S.C. § 2(b):

> Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

STATEMENT OF THE CASE

Following a jury trial in the Eastern District of Virginia, petitioner, Herbert G. Blecker, and Icarus Corporation, of which he is founder and president, were found guilty of six counts of making false claims against the government.[1] On January 19, 1980, Mr. Blecker was sentenced to one year in prison on each count, the sentences to run concurrently. Mr. Blecker appealed, and his convictions on all counts was affirmed by the Fourth Circuit on August 27, 1981. His petition for rehearing was denied on October 20, 1981.

The evidence adduced at petitioner's trial showed that in March, 1972, the Computer Sciences Corporation (CSC) was awarded a multi-million dollar contract by the General Services Administration (GSA) to provide federal agencies and departments with a wide range of computer and data processing services.[2] Under the terms of this National Teleprocessing System (NTS) contract, CSC provided all of the normal supply requirements for computer services for most of the federal government.

In order to satisfy this enormous demand, CSC was authorized to subcontract particular tasks or projects to outside corporations or individuals. One of CSC's subcontractors was the Icarus Corporation, whose founder and president is the petitioner, Herbert G. Blecker. Because Icarus had certain special skills and areas of expertise, CSC frequently called upon

---

[1] Petitioner and Icarus were also charged, along with an employee of the Computer Sciences Corporation (CSC), with one count of conspiracy and several counts of kickbacks (41 U.S.C. § 51-54), travel act violations (18 U.S.C. § 287) and mail fraud (18 U.S.C. § 1341). The CSC employee was acquitted on all counts. The petitioner and Icarus were acquitted of all counts except the six counts of false claims. Icarus was also convicted on two counts of mail fraud. Following its conviction, Icarus was ordered to pay sixty-two thousand dollars in fines. The fine has been paid. Only Blecker's false claims convictions are challenged here.

[2] The facts set out here were developed at the petitioner's trial before the Honorable Albert V. Bryan, Jr. that was held in December, 1979. The trial transcript, which consists of eight volumes of consecutively numbered pages, is included in the record on appeal.

it to provide services to the government under the NTS contract. Over the course of their several year relationship, Icarus provided thousands of hours of consultation, analysis, and programming which CSC employed to fulfill its obligations under the contract.

In order to receive compensation for services performed at the request of CSC, Icarus was required to prepare and submit invoices to CSC on a monthly basis, detailing the amount of work performed by each of its employees and other costs incurred. These invoices were then used by CSC to prepare its master billings for GSA. Icarus prepared its invoices in Maryland. They were never actually forwarded to GSA but rather were processed by CSC initially in Virginia and then mailed by CSC to its California office where the invoices were kept within the company's internal accounting system.[3]

The level of compensation for each subcontractor was set within a range provided for in the NTS contract. The contract established fourteen categories of consultants and analysts who could be paid between $18 and $45 an hour based upon their skill, education and experience. For each category, the schedule specified a summary of responsibilities, a list of major duties and a description of requisite education and experience. The subcontractor's employees were to be classified within these categories and a level of compensation thereby determined.

The system employed by CSC for classification of personnel was the evaluation of resumes submitted by the subcontractor. CSC unilaterally established this procedure. It was neither mandated by CSC's contract with GSA nor reviewed by the government. Icarus prepared a resume for each employee and submitted it to CSC in a form prescribed by CSC. The government's false claim case against the petitioner consisted of proof that in preparing these resumes for submission to CSC,

[3] This intracorporate mailing was the basis for the two mail fraud counts. Defendants filed a pretrial motion arguing that this very limited use of the mail bore an insufficient relationship to the execution of the alleged fraud to constitute an offense. Similar motions were raised at trial as motions for judgment of acquittal. These motions were denied and Icarus was subsequently convicted of two counts of mail fraud.

Mr. Blecker inflated and falsified the experience of certain of his employees. In very few instances were any of the experiences actually fabricated. Rather, titles were changed, previous jobs glorified, and training exaggerated. For example, a mail carrier became a "logistics technician;" a semester in college was listed as a year; courses taken at the Gruman Company were given at the "Gruman Institute;" a teacher became an "educational documents specialist."

In his testimony, petitioner did not deny Icarus' enhancement of the resumes. Instead, he sought to explain that such puffing was a common and accepted practice in the industry, and that his real concern was only that each of his employees be qualified to perform the level of work to which he was assigned.

The petitioner later requested that the judge instruct the jury on the commonness of "puffing" and repeatedly sought to introduce evidence demonstrating the quality of work provided by Icarus. It was petitioner's contention that the government did receive adequate value for the money expended on Icarus employees because the employees in question possessed unique qualifications and performed very effectively. The trial judge ruled that petitioner's "*quantum meruit*" theory was irrelevant and excluded the proposed evidence and declined to give an instruction on this theory. The Court of Appeals affirmed all of the trial court's evidentiary rulings.

Underlying this defense was the fact that Icarus was engaged in a commercial relationship with CSC, and that a statute dealing with false claims to the government could not be used to police the relationship between Icarus and CSC. Icarus' resumes were submitted to and reviewed only by CSC. The resumes were not required by the government, and were never forwarded to GSA. There was no evidence that any government employees ever reviewed them—or even knew they existed. Icarus' invoices were sent to CSC, and payment was received from CSC. CSC made all decisions regarding when Icarus would be hired and how much it would be paid. In short, the evidence established that the government and Icarus had no direct commercial relationship.

The invoices which Icarus submitted to CSC were prepared in Maryland. So were the resumes of Icarus' employees. Though CSC then processed this material in Virginia as well as in California, and billed GSA for the work Icarus did for it (CSC), neither the petitioner nor his corporation made or presented any claims in Virginia. Consequently, petitioner argued repeatedly in the trial court that venue for prosecution of the false claims did not properly lie within the Eastern District of Virginia.[4]

This case in fact began in the District of Columbia with the Department of Justice convening a grand jury to investigate contracts with GSA. For reasons not reflected in the record, the government unilaterally transferred the prosecution to the Eastern District of Virginia.

The process by which these claims were allegedly filed with GSA was never in dispute below. The government has never challenged the accuracy of the following chronology:

(1) On a monthly basis, Icarus, a Maryland corporation, prepared invoices in its offices in Maryland reflecting payment due for work performed for CSC during the preceding month.

(2) These invoices were transmitted to the offices of CSC in Rosslyn, Virginia. There was no evidence that either Blecker or any Icarus employee or agent was ever physically present in Virginia, in connection with the resumes or invoices.

(3) CSC employees transmitted the information contained in the invoices via a computer terminal to CSC's offices in El Segundo, California.

---

[4] At every appropriate point, petitioner and Icarus Corporation raised the venue issue with the trial court. They filed a pretrial Motion to Dismiss the False Claims Counts for Lack of Proper Venue in the Eastern District of Virginia. After the government's opening statement, they orally moved to dismiss the false claims counts for failure to allege proper venue. At the close of the government's case, they moved for judgment of acquittal for failure to prove that the offenses had occurred in the Eastern District of Virginia. At the conclusion of all of the evidence, they again moved for judgment of acquittal. Three separate motions were filed post-trial seeking relief on this basis. All were denied.

(4) CSC employees in California compiled the information regarding Icarus with its other billing data and sent a single master invoice back to CSC's office in Rosslyn, Virginia by Federal Express, a commercial carrier.

(5) The bill was then hand carried by a CSC employee to the GSA offices in the District of Columbia.

Defendants argued that mere passage of the claims through the Eastern District of Virginia did not establish proper venue. The trial court disagreed and allowed the case to go to the jury and subsequent verdicts of guilty to stand. The Court of Appeals affirmed the trial court's ruling that venue was properly laid in the Eastern District of Virginia.

REASONS FOR GRANTING THE WRIT

I. THE DECISION OF THE FOURTH CIRCUIT ALLOWING THE GOVERNMENT TO PROSECUTE THE PETITIONER IN A DISTRICT WHERE HE NEITHER PREPARED NOR SUBMITTED THE CLAIMS ALLEGED TO HAVE BEEN FALSE IS INCONSISTENT WITH THIS COURT'S DECISION IN *TRAVIS* v. *UNITED STATES*, 364 U.S. 631 (1961), AND GIVES THE GOVERNMENT UNCONSTITUTIONALLY BROAD, VIRTUALLY UNBRIDLED, DISCRETION TO PICK AND CHOOSE THE COURT IN WHICH IT WILL PROSECUTE FALSE CLAIMS CHARGES.

Twenty years ago, in *Travis* v. *United States*, 364 U.S. 631 (1961), this Court ruled that the false statement count charged there under 18 U.S.C. § 1001 could only be tried in the District where the statement was actually submitted to the government.[5] "The locus of the offense," the Court said, "has been

[5] 18 U.S.C. § 287 and 18 U.S.C. § 1001 derive from the same statute. Originally enacted along with the civil false claims law (now 31 U.S.C. § 231), Act of March 2, 1963, 12 Stat. 696, 67, the criminal statutes were jointly codified as 18 U.S.C. § 5438. Section 5438 was later amended and recodified as 18 U.S.C. § 80, which was subsequently divided into § 1001. See Revisers Note, 18 U.S.C.A. § 1001. See also *Johnson* v. *United States*, 410 F.2d 38, 44 (8th Cir. 1969).

carefully specified; and only the single act of filing a false statement at a specified place is penalized .... We conclude that venue lay only in the District of Columbia [the jurisdiction where the statement was actually filed, and not in Colorado where it was drawn up and placed in the mail]." 364 U.S. at 635-37.

Several of the circuits, including the Fourth prior to its decision below, have taken the strict approach to venue in false statement cases which the Court advanced in *Travis*, see e.g., *United States* v. *Reass*, 99 F.2d 752 (4th Cir. 1938); *United States* v. *Valenti*, 207 F.2d 242 (3d Cir. 1953); *United States* v. *Kragman*, 225 F.2d 220 (6th Cir. 1955). Other circuits, however, have read *Travis* as limited to its facts,[6] and ruled that venue in a false claim prosecution can properly be laid either in the district where the claim is filed or the district in which it is prepared. See, e.g., *United States* v. *Natelli*, 527 F.2d 311 (2d Cir. 1975); *United States* v. *Herberman*, 583 F.2d 222 (5th Cir. 1978); *United States* v. *Ruehrup*, 333 F.2d 641 (7th Cir. 1964); *Imperial Meat Co.* v. *United States*, 316 F.2d 435 (10th Cir. 1963).

No circuit has gone as far as the Fourth Circuit did here in ruling that a false claims charge could be prosecuted in any district where an innocent, independent intermediary (here CSC), which was a government contractor, happened to process bills submitted to it by its subcontractor (the petitioner). This Court should grant a writ of certiorari in this case, to clarify its decision in *Travis*, and to make it clear that the venue clause of the Sixth Amendment forbids the government from trying false claims prosecutions in a district where, as here, the defendant does nothing in that district that is relevant to the offense charged. This is an increasingly important and pressing issue, for false claims prosecutions are now among the most numerous of all federal criminal cases. If the Fourth Circuit's decision is allowed to stand, government prosecutors will have

[6] The court below narrowly construed *Travis* as applying only "in the context of the unique statutory language dealt with in that case . . . ." (Slip Op. p. 8) The court did not adequately explain, however, why this case was different from *Travis*.

unconstitutionally wide leeway to pick and choose where these cases will be tried; for in our computerized economy, where subcontracting on government contracts is commonplace, invoices, billings and other documents are frequently processed in several, disparate districts, far from the defendant's activities. To permit the government to prosecute in any such districts will open up the opportunities for forum shopping and oppression which the venue clause of the Sixth Amendment was intended to foreclose.

The facts of this case demonstrate why this is so. The case initially commenced in the District of Columbia. Investigation began; a grand jury was convened; defendant Blecker was targeted; and a number of witnesses were called to testify. Then, in mid-proceeding, for reasons which have never been explained, the prosecution was transferred out of the District of Columbia. The government appears to have gone forum shopping and selected the Eastern District of Virginia.

The venue requirement of the Sixth Amendment should have precluded this, for no act material to these offenses was committed by either Blecker or Icarus in the Eastern District of Virginia. The invoices, which constituted the alleged false claims, were prepared in Icarus' offices in Maryland. They were filed with the government in the District of Columbia. On the way to the District of Columbia from Maryland, they were transmitted through Virginia and California by the wholly independent, innocent intermediary, CSC.

The Fourth Circuit held that the mere passage of the claim through the Eastern District of Virginia constituted a sufficient nexus with that jurisdiction to establish it as a proper venue for trial. The court apparently accepted the government's argument that because the claims against the government were partially prepared by CSC in the Eastern District of Virginia, venue could properly be laid in that district.

For its argument, the government relied on 18 U.S.C. § 3237, which provides that an "offense against the United States begun in one district and completed in another, or committed in more than one district may be inquired into or prosecuted in any district in which such offense was begun,

continued or completed." That statute, the government contended, established proper venue in the Eastern District of Virginia because the false claims statute applies to anyone who "makes or presents" a false claim to the government, and here the claim was partially "made," i.e., drawn up or prepared, in the Eastern District.

The flaw in the government's argument and in the Fourth Circuit's reasoning, however, is that the claim was in no sense drawn up or prepared in the Eastern District of Virginia *by the petitioner.* His alleged criminal conduct occurred solely in Maryland. Thus Maryland or the District of Columbia were the districts where venue could properly have been laid: Maryland, because that is where the petitioner prepared the claims, and the District of Columbia because petitioner knew bills based in part on those invoices were to be presented there to the federal government. But the venue clause protected the petitioner against the prosecutor's forum shopping among Maryland, the District of Columbia, and each of the districts in which CSC happened to have processed its claims (here, Virginia and California), and picking the Eastern District of Virginia.

In reaching its decision, the Fourth Circuit relied on decisions from other circuits where venue was held to have been properly laid in the district in which claims were either made or prepared. The accompanying chart illustrates that several of the circuits have indeed so held, but none—save the Fourth in this case—has allowed a third district to serve as the place of trial:

Case	District of Trial	District Where Defendant Prepared Claims	District Where Claim Was Filed
Icarus and Blecker	Virginia	Maryland	District of Columbia
1. *Miller* 246 F.2d 486 (2nd Cir. 1957)	Southern District of New York	Southern District of New York	Illinois (and District of Columbia)
2. *Candella* 487 F.2d 1223 (2nd Cir. 1959)	Southern District of New York	Eastern District of New York	Southern District of New York
3. *Slutsky* 487 F.2d 832 (2nd Cir. 1973)	Southern District of New York	Southern District of New York	Northern District of New York
4. *Natelli* 527 F.2d 311 (2nd Cir. 1975)	Southern District of New York	Southern District of New York	District of Columbia
5. *DeRosier* 218 F.2d 420 (5th Cir. 1957).	Florida	Florida	District of Columbia
6. *Henslee* 262 F.2d 750 (5th Cir. 1959).	Southern District of Texas	Southern District of Texas	District of Columbia
7. *Herberman* 583 F.2d 222 (5th Cir. 1978)	Western District of Texas	Western District of Texas	Northern District of Texas
8. *Ruehrup* 333 F.2d 641 (7th Cir. 1964).	Illinois	Illinois	Missouri
9. *Imperial Meat Co.* 316 F.2d 435 (10th Cir. 1963)	Colorado	Colorado	Missouri

(The chart reflects all false claims (and false statement) cases in which venue has been argued. The government has never challenged the accuracy of the chart.)

As this chart shows, however, these cases did not involve claims prepared by an innocent, independent intermediary. Thus none of the circuits have held, as the Fourth Circuit did here, that venue could properly be laid in any district where an innocent intermediary happened to prepare its claims incorporating material submitted to it by a subcontractor-defendant charged under the false claims statute.

The Fourth Circuit, then, has moved two long steps beyond *Travis,* where this Court ruled that the preparer-defendant could be prosecuted only where he filed his false statement. This is the first instance where a circuit court has sanctioned venue in a district where the defendant neither prepared nor submitted the false claim or statement.[7] Now, according to the Fourth Circuit, it seems it is not even necessary that the defendant prepared the statement in the district where he is to be tried. This Court should not permit this result. The defendant's Sixth Amendment right to be tried in the district wherein the crime is alleged to have been committed is a fundamental one. As this Court has said, an objection to venue is not a complaint over a minor technicality or a "matter of mere procedure." *Travis,* 364 U.S. at 634. Rather, it is a

---

[7] The Fourth Circuit acknowledged the lack of precedent for its opinion, noting that

> presented with a similar factual situation, the Second Circuit has *implied* that venue is proper in either the district in which the false claim is submitted to the intermediary or the district in which the intermediary transmits a false claim to the agency. *United States* v. *Candella,* 487 F.2d 1223, 1227-28 (2d Cir. 1973). (emphasis added).

Candella does not—even by "implication"— support the Fourth Circuit's decision, for only two jurisdictions were involved. There, defendants were charged with violations of 18 U.S.C. § 1001 (false statements). Trial was in the Southern District of New York, where the documents were *filed* with HUD. On appeal the defendant claimed that the trial should have been in the Eastern District of New York where the documents "were prepared, executed and handed to the New York City official." 487 F.2d at 1227. The Second Circuit rejected this argument and simply followed numerous other appellate decisions which permit venue where the statement was prepared or received. Nothing in *Candella* allows for the "implication" that venue is proper in a third jurisdiction.

constitutional challenge which "raise[s] deep issues of public policy ... [which] touch closely the fair administration of criminal justice and public confidence in it." *United States* v. *Johnson*, 323 U.S. 273, 276 (1944).

It is time that this Court clarified just what the Sixth Amendment venue right amounts to when as here, the government charges, as it so frequently does, a violation of the false claims statute, 18 U.S.C. § 287.

II. THIS COURT SHOULD GRANT THE WRIT TO RESOLVE THE SPLIT AMONG THE CIRCUITS ON THE IMPORTANT, RECURRING, AND FUNDAMENTAL QUESTION OF WHETHER COMMERCIAL TRANSACTIONS BETWEEN TWO PRIVATE, INDEPENDENT, NONGOVERNMENTAL ENTITIES CAN FORM THE BASIS FOR A FALSE CLAIMS CHARGE UNDER 18 U.S.C. § 287.

Defendants Icarus and Blecker were convicted of presenting false claims to the government in violation of 18 U.S.C. § 287. The claims involved compensation for consulting services provided by Icarus and its employees pursuant to the NTS contract entered into between the federal government and CSC.

The false claims act (18 U.S.C. § 287) is intended "to assure the integrity of claims and vouchers submitted to the government."[8] *United States* v. *Maher*, 582 F.2d 842, 848 (4th Cir. 1978). It is designed to create criminal liability for persons who make fraudulent demands or claims *against the federal government.* See e.g. *Pina* v. *United States*, 165 F.2d 890 (9th Cir. 1948); *United States* v. *Snider*, 502 F.2d 645 (4th Cir. 1974); *United States* v. *Wertheimer*, 434 F.2d 1004 (2d Cir. 1970). It is only when such a claim is made that the statute

[8] 18 U.S.C. § 287 provides that "whoever makes or presents to any person or officer in the civil, military or naval services of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious or fraudulent, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

comes into play, for otherwise no harm is done to the government. In the typical false claims case, the claimant-defendant has a direct link to the government and his obligations are defined either by contract (see e.g.; *United States* v. *Wertheimer, supra*) or by statute (see e.g. *United States* v. *Valenti*, 207 F.2d 242 (3d Cir. 1953)). In this case, there was no direct link between the defendant and the government, contractual or statutory.

The evidence at trial showed conclusively that the claims made by Icarus were not made upon the government. There were only private business dealings between two private non-governmental entities—Icarus and CSC. The federal government did not participate in the contract or the business arrangement between these two organizations. Nor did government regulations dictate or structure the contract which they agreed to. It was this private contract, and this contract only, that established that resumes of Icarus employees would be a basis for fixing the payments due Icarus under the contract.

While the Fifth Circuit has held that under similar circumstances there is no violation of the false claims statute, *Lowe* v. *United States*, 141 F. 2d 1005 (5th Cir. 1944), other circuits have distinguished *Lowe* where it appeared that the party submitting the false statements to the intermediary knew that the intermediary would be reimbursed by the government on the basis of those statements. See e.g., *United States* v. *Candella*, 487 F.2d 1223 (2d Cir. 1973). The court below also sought to distinguish *Lowe* and relied on *Candella*, to affirm the petitioner's conviction because "there was substantial evidence that Icarus submitted invoices for hourly rates based on falsified resumes with knowledge that CSC would seek reimbursement for the payment of invoices from the GSA." (Slip Op. p. 12). But the false claims statute, 18 U.S.C. § 287, applies only to "whoever makes or presents . . . to any department or agency [of the United States] any claim upon or against the United States . . . knowing such claim to be false, fictitious, or fraudulent . . ." Quite simply, petitioner never made or presented any claim whatever to any department or agency of the United States. This court should resolve the question of whether a party that makes no such claim can nevertheless be liable under 18 U.S.C. § 287.

III. THE FOURTH CIRCUIT'S INTERPRETATION OF 18 U.S.C. §287 AND 18 U.S.C. §2(b) PERMITS THE FEDERAL GOVERNMENT TO POLICE CONTRACTS BETWEEN PRIVATE PARTIES WITHOUT REGARD TO WHETHER ANY FALSE, FICTITIOUS OR FRAUDULENT CLAIMS ARE MADE ON THE GOVERNMENT.

18 U.S.C. § 287 no longer provides that anyone who "causes" another to make or present a false claim to the government is liable.[9] Nevertheless, the Fourth Circuit reasoned that liability for causing another to file a false claim is now provided for in 18 U.S.C. § 2(b), which provides that "whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." (Slip Op. p. 11).

The Fourth Circuit accepted the government's theory that because the resumes submitted to CSC were "puffed up," Icarus received unwarranted, additional compensation, and this, in turn, resulted in higher billings of GSA by CSC. Thus, on the court's analysis, petitioner "caused" a false, fictitious or fraudulent claim to be presented to a government agency. The petitioner sought to counter this charge by showing that CSC's claims were not in fact false, fictitious or fraudulent, and so that no violation of 18 U.S.C. § 287 ever in fact occurred. Consequently, petitioner and Icarus were not liable even if they stand in CSC's shoes under 18 U.S.C. § 2(b). His argument was that unless there is a false claim made or presented to a federal agency, the policing of contracts between subcontractors and government contractors should be left to the parties themselves operating under state law. The petitioner argued that here there simply were no false statements filed with the government, for the falsified resumes were submitted only to CSC. And he sought to prove that there were no fictitious or fraudulent claims on the government because its invoices to CSC were in no way excessive in light of the work done, and that CSC, in turn, billed the government at a fair rate for the work done. In

[9] Congress deleted the "cause" language when it enacted the present version of the false claims statute.

short, petitioner argued that even if the resumes were falsified, the payments to Icarus were fair and equitable. Thus CSC's bills to the government were not fraudulent.

The trial court refused to allow petitioner to prove that CSC's claims were not fraudulent, and the Fourth Circuit affirmed: "This *quantum meruit* argument," the court said, "is simply a restatement of the contention that conviction for violating section 287 requires a showing of specific intent to defraud the government . . . ." (Slip Op. p. 13). This was not the petitioner's argument at all. By rejecting it as it did, the Fourth Circuit ruled, in effect, that it is a federal offense for a subcontractor to make a false statement to a government contractor even though no injury is done to the federal government. This unwarranted extension of federal power should be stemmed by this Court.

CONCLUSION

For the foregoing reasons, petitioner respectfully submits that this Court should issue a writ of certiorari to the Court of Appeals for the Fourth Circuit to review its decision.

Respectfully submitted,

JACOB A. STEIN
ROBERT F. MUSE

STEIN, MITCHELL & MEZINES
1800 M Street, N.W.
Washington, D.C. 20036
(202) 737-7777

SILAS J. WASSERSTROM
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001

Attorneys for:
Herbert G. Blecker

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 80-5014

UNITED STATES OF AMERICA,
Appellee,

versus

HERBERT G. BLECKER,
Appellant.

No. 80-5015

UNITED STATES OF AMERICA,
Appellee,

versus

ICARUS CORPORATION,
Appellant.

Appeals from the United States District Court for the Eastern District of Virginia, at Alexandria. Albert V. Bryan, Jr., District Judge.

Argued April 10, 1981. Decided August 27, 1981

Before HALL and PHILLIPS, Circuit Judges, and G. ROSS ANDERSON, JR., United States District Judge sitting by designation.

Jacob A. Stein; Plato Cacheris (Robert F. Muse on brief) for Appellants; Frank J. Marine, Department of Justice (Justin W. Williams, United States Attorney; William S. Lynch, Department of Justice on brief) for Appellee.

PHILLIPS, CIRCUIT JUDGE:

Icarus Corporation (Icarus) and its president, Herbert Blecker, challenge the convictions of each on six counts of presenting false claims to a agency of the United States in violation of 18 U.S.C. § 287 and Icarus' conviction on two counts of mail fraud in violation of 18 U.S.C. § 1341. Icarus and Blecker contend that venue was improper in the United States District Court for the Eastern District of Virginia. They further argue that there was insufficient evidence to support the convictions for either submitting false claims or mail fraud and that remarks made by the prosecutor in his summation to the jury effectively deprived them of a fair trail. We find all the contentions of the defendants to be without merit and accordingly affirm their convictions.

I

Briefly stated, the government alleged in its indictment of Icarus and Blecker that the defendants submitted invoices for fees based on false resumes to the Computer Sciences Corporation (CSC) knowing that CSC, in turn, would present the claims to the General Services Administration (GSA) for payment. Icarus was also charged with mail fraud in causing these invoices to be mailed to a CSC office in California.

The evidence presented at trial tended to show that, in March 1972, CSC was awarded a multimillion dollar contract by the GSA to provide federal agencies with computer and data processing services. Under the terms of this National Teleprocessing System (NTS) contract, CSC provided all the normal supply requirements for computer services for most of the federal government. CSC was authorized to subcontract for consulting services that, under Schedule J of the NTS contract, were to be paid for at rates based upon the consultants' education and experience.

In 1973, CSC subcontracted for consulting services from Icarus. At this time Blecker was told by a CSC official that rates were set according to very specific requirements for education

and experience and was given a copy of the NTS contract. Blecker then instructed a number of his employees to embellish their resumes with additional schooling and experience and had the resumes of other employees enhanced without their knowledge. These false resumes were then taken from Icarus' office in Maryland to an official at CSC's Rosslyn, Virginia office for use in computing consultant fees.

In order to receive compensation for services performed under the NTS contract, Icarus was required to prepare and submit invoices to CSC on a monthly basis. At its Rosslyn office, CSC employees checked the rates billed on the Icarus invoices with the resumes of Icarus employees to determine whether Icarus had billed the approved rate for those employees. CSC employees then made the necessary computations and prepared a billing sheet. Information from the billing sheet was transmitted via computer from the CSC office in Rosslyn to the CSC accounting office in El Segundo, California. There, CSC employees prepared a bill for the GSA from the information contained in the Icarus invoices and billing sheets. The bills were then mailed back to the CSC offices in Rosslyn, from which they were hand delivered to the GSA office in Washington, D.C. CSC employees also mailed the Icarus invoices from its Rosslyn office to its California office, where CSC employees used the invoices to prepare a check payable to the order of Icarus. These mailings were the subject of the mail fraud charges.

Throughout the presentation of their defense to the false claims charges, Icarus and Blecker attempted to introduce evidence that the Government got its money's worth from the services billed by Icarus. The court, however, excluded as irrelevant any testimony about the value of the services performed by Icarus, and it instructed the jury to this effect. The court also refused to give an instruction that the jury should consider whether the "puffing" of resumes engaged in by Icarus was a common business practice for which it should not be held criminally liable.

During the course of his closing argument, the prosecutor urged the jury not to allow the defendants to cheat, lie, scheme

and defraud and to show the defendants "that crime does not pay." He also remarked at one point that, while Icarus paid its employees at one rate, "[w]e had to pay more." When the defendants objected to this statement, the court took the precaution of instructing the jurors that they were not to feel they had a personal stake in the outcome of the case. The case was subsequently submitted to the jury, and it returned verdicts of guilty against Icarus and Blecker on the false claims counts and against Icarus on the mail fraud counts.

II

The defendants contend at the outset that their conviction on the false claims counts in the Eastern District of Virginia was unlawful because that court lacked venue to try those charges. The sixth amendment unequivocally mandates trial in the "State and district wherein the crime shall have been committed," and proof of venue is therefore an essential part of the government's case without which there can be no conviction, *United States* v. *Jones*, 174 F.2d 746, 748 (7th Cir. 1949). When, as in the present case, however, the statute defining the substantive offense "does not indicate where Congress considered the place of committing the crime to be, the *locus delicti* must be determined from the nature of the crime alleged and the location of the act or acts constituting it." *United States* v. *Anderson*, 328 U.S. 699, 703 (1946) (citations omitted). In determining the act or acts constituting the crime, we have commonly focused on the verbs employed in the statute defining the offense. *See, e.g., United States* v. *Walden*, 464 F.2d 1015, 1018 (4th Cir. 1972); *Newton* v. *United States*, 162 F.2d 795, 796 (4th Cir. 1947). Finally, both the courts, *see, e.g., United States* v. *Johnson*, 337 F.2d 180, 194 & 194 n.22 (4th Cir. 1964), and Congress, 18 U.S.C. § 3237, have recognized that, when the crime is composed of distinct parts or is begun in one district and completed in another, venue may be proper in more than one district.

Applying these well-settled principles to the facts of this case, we must look first to the language of the false claims

statute itself. That statute provides that any person who "makes or presents" a false claim to any agency of the United States is guilty of a crime. Thus, venue lies to prosecute a violator of this statute in either the district in which the claims were made or prepared, *see, e.g., United States v. Herberman,* 583 F.2d 222, 227 (5th Cir. 1978), or the one in which they were presented to the government, *see, e.g., United States v. Valenti,* 207 F.2d 242, 245 (3d Cir. 1953). Venue in the present case was therefore unquestionably appropriate in the district of Maryland in which the false claims were prepared or in the District of Columbia in which they ultimately came to rest with the GSA.

The defendants argue, however, that venue could not possibly lie in the Eastern District of Virginia, which the claims only "pass through." In support of their position, the defendants rely heavily on *Travis* v. *United States,* 364 U.S. 631 (1961), and *Reass* v. *United States,* 99 F.2d 752 (4th Cir. 1938). The courts in both these cases restricted venue solely to the district in which a false statement was actually submitted to or filed with a governmental agency. *Travis,* 364 U.S. at 635-37 (venue restricted to District of Columbia in which union official required to file affidavit with NLRB declaring that he was not a communist pursuant to 29 U.S.C. § 159(h)); *Reass,* 99 F.2d at 753-55 (venue restricted to Eastern District of Pennsylvania in which defendant hand delivered false statement for purpose of influencing action of Federal Home Loan Bank in violation of 12 U.S.C. § 1441(a)). However, the courts have narrowly construed *Travis* to apply only in the context of the unique statutory language dealt with in that case, *see, e.g., United States* v. *Natelli,* 527 F.2d 311, 326 (2d Cir. 1975), and in *Reass* we expressly refused to pass on the question "whether the offense would have been cognizable in West Virginia, if the defendant had entrusted the application to the mails in Wheeling for delivery to the bank in Pittsburgh," *Reass,* 99 F.2d at 755.

Neither the *Travis* nor the *Reass* court dealt with the clearly distinct context with which we are confronted in the present case, in which the false claim was submitted to an

intermediary in one district who paid the claim and then transmitted a claim for reimbursement based on that payment, as a matter of course, to a government agency in another district. Presented with a similar factual situation, the Second Circuit has implied that venue is proper in either the district in which the false claim is submitted to the intermediary or the district in which the intermediary transmits the false claim to the agency. *United States* v. *Candella*, 487 F.2d 1223, 1227-28 (2d Cir. 1973). We are persuaded to the same result.

The last act taken by the defendants in committing the crime of submitting false claims to the government was the presentation of those claims to CSC at its Rosslyn, Virginia office with the knowledge that they would ultimately be transmitted to the GSA for payment. The possibility that the claims might have been misplaced or questioned by CSC short of submission to the GSA does not break the chain. Had either of these fortuities in fact taken place a violation of the false claims statute arguably would not have occurred. We, however, must view the commission of the offense in retrospect with the knowledge that neither of those fortuities, in fact, occurred and that the defendants submitted the false claims to CSC on the assumption and in the hope that they would not. *See DeRosier* v. *United States*, 213 F.2d 420, 422 (5th Cir. 1955). Under these circumstances, we hold that venue properly lay in the Eastern District of Virginia.

III

The defendants next argue that the district court misapprehended the elements required for a conviction under 18 U.S.C. § 287 and that as a result of this misapprehension the court erroneously excluded certain evidence that the defendants sought to introduce in their defense and improperly instructed the jury. Icarus and Blecker first contend that section 287 prohibits only the submission of false claims directly to the government and that the district court therefore erred in instructing the jury that it could base a conviction on Icarus'

submission of false invoices to the GSA through an intermediary such as CSC because Icarus had no direct contractual relationship with the government.

This constitutes an oversimplification of the scope of the false claims statute that has been rejected by every court that has considered the matter. For example, in *United States ex rel. Marcus* v. *Hess*, 317 U.S. 537 (1943), the Supreme Court was called upon to construe R.S. § 5438, the forerunner of section 287, which in addition to the present statute's prohibition of making or presenting false, fictitious or fraudulent claims to the government also prohibited the causing of another to make or present such claims. The Court in *Hess* held that, when private contractors engaged in collusive bidding practices on contracts made with local governmental units but for which a large portion of the funding was supplied by the federal Public Works Administration, the contractors were "causing to be presented" a fraudulent claim against the United States. *Id.* at 543-45.

It may be contended that the present version of the false claims statute, from which Congress has deleted the "cause" language, precludes conviction of the defendants in the instant case on the theory of *Hess*. The Reviser's Note to section 287, however, makes it clear that the "cause" language was omitted as unnecessary in view of Congress' enactment of 18 U.S.C. § 2(b), which provides that "[w]hoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." Therefore, the "intermediary" theory of *Hess* remains good law and has since been applied in a number of cases. *See, e.g., United States* v. *Beasley*, 550 F.2d 261, 271-74 (5th Cir. 1977) (false claim submitted to local governmental unit under contract for which funds were supplied by HEW); *United States* v. *Catena*, 500 F.2d 1319, 1322-23 (3d Cir. 1974) (false claim submitted to private insurance carrier who sought reimbursement from HEW).

Lowe v. *United States*, 141 F.2d 1005 (5th Cir. 1944), on which the defendants rely, is not to the contrary. In *Lowe*, the Fifth Circuit reversed the conviction of an employee upon a

charge that he had violated the false statements statute by making a false statement of his hours to his employer, a private corporation engaged in building ships under a contract to the United States Maritime Commission that called for reimbursement of the wages paid by the employer. The court held that "the mere allegation of the existence of the contract providing for reimbursement of payroll payments was not sufficient to make appellant's alleged fraudulent misrepresentation to his employer an offense against the United States." *Id.* at 1006.

Lowe has been twice distinguished from cases similar to the present one, however, on the ground that there was no showing in that case that the employees submitted his false statement of hours with knowledge that his employer would receive reimbursement from the government for the wages paid on the basis of that statement. *United States* v. *Candella,* 487 F.2d at 1226-27; *Ebeling* v. *United States,* 248 F.2d 429, 435 (8th Cir. 1957). In the present case, on the other hand, there was substantial evidence that Icarus submitted invoices for hourly rates based on falsified resumes with knowlege that CSC would seek reimbursement for the payment of the invoices from the GSA. This evidence amply supported the government's charge that Icarus and Blecker violated section 287 by submitting false claims to the government through an intermediary, and we find that theory of prosecution to be consontant with the language and meaning of the false claims statute.

The defendants' next contention with respect to misapprehension of section 287 is that the district court erred in excluding evidence proffered by the defendants that the government got its money's worth for the consultant services performed by Icarus and in refusing to instruct the jury that it must find that the government did not receive adequate value for the money expended on work performed by Icarus in order to convict the defendant of a violation of the false claims statute. This *quantum meruit* argument is simply a restatement of the contention that conviction for violating section 287 requires a showing of specific intent to defraud the government—a contention that we rejected in *United States* v. *Maher,* 582 F.2d 842 (4th Cir. 1978). As we stated in *Maher,* section 287 is

phrased in the disjunctive, and a conviction under that statute may therefore be based on proof that a claim submitted to the government is either false, fictitious *or* fradulent. *Id.* at 847; *accord, United States* v. *Milton,* 602 F.2d 231, 233 (9th Cir. 1979) (relying on *Maher*); *Boushea* v. *United States,* 173 F.2d 131, 135 (8th Cir. 1949). Thus, the government met its burden of proof in this case by showing that the defendants submitted invoices to CSC with knowledge of their falsity, and evidence that the government got its money's worth was no defense to this proof.

The defendants' final substantive challenge to their conviction under section 287 is the assertion that the claims submitted to the government were not false. In reliance on our recent decision in *United States* v. *Race,* 632 F.2d 1114 (4th Cir. 1980), they argue that the NTS contract between the GSA and CSC only required CSC to provide computer services of a particular character and quality and that, those services having been provided, CSC was free to and did pay its subcontractors at greater and lesser rates than that at which it was paid by the GSA. A brief comparison of the facts in *Race* with those of the present case, however, suffices to demonstrate why we reversed the convictions in the former but now affirm these.

In *Race,* the defendants were executives of a corporation that had contracted to provide certain engineering services to a Naval operational unit in the Navy's Southeastern Region. Under the contract, when employees of the corporation were required to perform services for the Navy more than fifty miles from Charleston, South Carolina, the corporation was entitled to claim per diem for those employees at the rate of $33 per day. The government alleged that the defendants had violated the false statements statute, 18 U.S.C. § 1001, by submitting claims for per diem at the rate of $33 per day while actually paying their employees per diem at the rate of $25 per day. *Id.* at 1117. We reversed the convictions because of our agreement with the defendant's construction of the contract—of which the Navy at all times had knowledge—as one requiring payment of per diem in all cases at the rate of $33 and not merely

reimbursement of the amount of per diem that the corporation actually paid its employees. *Id.* at 1118-21.

Like the corporation in *Race,* CSC was free here to pay its subcontractors at a rate higher or lower than that at which it was paid by the government. Under Schedule J of the NTS contract, however, CSC was to be paid at hourly rates based on the experience and educational background of the consultants performing the work, and it chose to pay for the work it subcontracted to Icarus on this same basis. Moreover, the government presented overwhelming evidence that Blecker knew that the provisions of Icarus' contract with CSC were simply reflective of CSC's prime contract with the GSA. Thus, Blecker knew that the cost of any false invoices submitted to CSC would be passed on to the GSA in the form of an invoice that was false according to the provisions of Schedule J.

The defendants argue, however, that the dominant component of Schedule J is the description of responsibilities and duties of which experience and educational background are but two possible methods of measurement. They point to a provision of the schedule permitting assignment of an indvidual to a job when his or her "education and background is other than specified" so long as the "specific experience meets the Government's needs." They then contend that Icarus was entitled to the rates that it billed to CSC because, while its employees did not meet the experience or educational background requirements for those rates, they did fall within the "specific experience" proviso inasmuch as they were the only ones qualified to run a computer program perfected by Icarus and used for the benefit of the GSA.

This cannot operate as a defense to the defendants' conviction under section 287. Regardless of the special qualifications of Icarus' employees, the evidence presented at trial showed that, rather than rely on those special qualifications, Blecker puffed or instructed others to puff the resumes of his employees with false information about their education and experience and that these resumes served as the basis for the hourly rates charged in the invoices submitted to CSC and, in turn, to the GSA. Because the resumes were false, the claims

that they were used to justify were also false, and this evidence was sufficient to convict the defendants of violating section 287.

IV

The defendants next contend that they were denied a fair trial on the false claims charge as a result of the improper remarks of the prosecutor in his closing argument to the jury. Although the defendants make brief reference to a number of the prosecutor's remarks, we find it necessary to comment on only one. In discussing the false claims submitted by the defendants, the prosecutor stated that, while Blecker paid his employees at one rate, "[w]e had to pay more." Viewing this statement as an appeal to the pecuniary interests of the jurors as taxpayers, defense counsel objected. The trial court sustained the objection and instructed the jurors at length that they should not view the case as if they had a personal stake in its outcome.

We recognize that appeals to the pecuniary interests of jurors are patently improper. *United States* v. *Smyth,* 556 F.2d 1179, 1185 (5th Cir. 1977); *United States* v. *Trutenko,* 490 F.2d 678, 679 (7th Cir. 1973). We must also take into account, however, the ambiguous use of "we," by which the prosecutor might well have meant only the government, in judging the possible effect of the prosecutor's remark on the jury. Moreover, the court's curative instruction was thorough, and unequivocally reminded the jurors of their duty to pass on the evidence without prejudice. Finally, it should be noted that this was not a close case. Upon consideration of this combination of mitigating factors, we conclude that the prosecutor's comment, while not to be condoned, did not constitute reversible error.

V

Finally, Icarus challenges the sufficiency of the evidence to convict it of mail fraud in violation of 18 U.S.C. § 1341. The elements of the offense of mail fraud are (1) a scheme or

artifice "for obtaining money or property by means of false or fraudulent pretenses" and (2) the mailing of a letter for the purpose of executing that scheme. *Pereia* v. *United States*, 347 U.S. 1, 8 (1954). The first element is supplied, of course, by the false claims violations. Icarus therefore questions only the sufficiency of the evidence to meet the second element.

It is clear from the evidence presented at trial that no mailing was involved in Icarus' submission of false invoices to CSC and CSC's use of the data contained in those invoices to in turn prepare and file with the GSA invoices for the services provided by Icarus. Icarus therefore argues that the mailing on which its mail fraud conviction was based could not possibly have been "incident to an essential part of the scheme" as required by the Supreme Court in *Pereia. Id.*

Icarus' argument, however, is premised on a construction of the scope of the mail fraud statute that is far too narrow. The requisite relation of mailings to the fraudulent scheme "does not turn on time or space, but on the dependence in some way of the completion of the scheme or the prevention of its detection on the mailings in question." *United States* v. *LaFerriere*, 546 F.2d 182, 187 (5th Cir. 1977). The present case is not one in which the mailings took place after the object of the scheme had been accomplished, *see, e.g., United States* v. *Maze*, 414 U.S. 395, 402 (1974), or before the scheme had commenced, *United States* v. *Tarnopol*, 561 F.2d 466, 471-73 (3d Cir. 1977). Nor is it a case in which the mailings were merely incidental and might, in fact, be regarded as in conflict with the scheme. *See, e.g., United States* v. *Staszcuk*, 502 F.2d 875, 880-81 (7th Cir. 1974).

While the mailings in this case did take place after the false claims had been submitted to the GSA, they were a prerequisite to the payment of Icarus for those false claims, which was the ultimate object of the scheme to defraud. Mailings that occur subsequent to the commission of fraudlent acts by the defendants but which relate to the acceptance of the proceeds of the scheme have been upheld as the predicate for mail fraud convictions. *See, e.g., United States* v. *Rauhoff*, 525 F.2d 1170,

1176 (7th Cir. 1975); *United States* v. *Issacs,* 493 F.2d 1124, 1151-52 (7th Cir. 1974). The mailings in this case fit squarely within that mold.

Icarus contends, however, that its case is distinguishable because the mailings involved were intracorporate ones from CSC's Rosslyn, Virginia office to its accounting office in El Segundo, California. "Ordinarily, charges of violations of section 1341 will not be predicated upon innocent corporate mailings in the ordinary course of the day to day business of the corporation." *United States* v. *Brickey,* 296 F. Supp. 742, 749 (E.D. Ark. 1969). We have recognized, however, that where, as here, a defendant has a reasonable basis to foresee that the mails will be used by others in the execution of a scheme to defraud, those mailings may serve as the basis for the defendant's conviction under section 1341. *United States* v. *Perkal,* 530 F.2d 604, 606-07 (4th Cir. 1976). Thus, while the internal CSC mailings may have been otherwise innocent, Icarus had knowledge that those mailings were an integral part of its scheme to obtain money for its false claims for computer consultant services. We therefore uphold the use of those mailings as the predicate for Icarus' conviction of violating 18 U.S.C. § 1341.

AFFIRMED.